



Home and Community Based Conflict of Interest Policy

KDADS established this policy for the purpose of compliance with Centers for Medicare and Medicaid Services (CMS). It is intended to mitigate conflict of interest that may exist where home and community based Medicaid services are provided. Participants can maintain control of services and conflicts of interest may be mitigated by securing Durable Power of Attorney or separating the “employer of record” from the “manager/worker” and the use of administrative firewalls to separate the two entities.

Consistent with 42 CFR 441.301, the State will ensure policies, processes and protocols are in place to support the person-centered planning process and to mitigate potential conflicts of interest. As a result, KDADS has established the following policy to address potential conflicts:

1. A court appointed legal guardian is not permitted to be a paid provider for the participant unless a court determines that all potential conflict of interest concerns have been mitigated in accordance with KSA 59-3068.
 - a. It is the responsibility of the appointed guardian to report any potential conflicts to the court and to maintain documentation regarding the determination of the court.
 - b. A copy of the special or annual report in which the conflict of interest is disclosed will be provided to the State or designee.
2. If the court determines that all potential conflict of interest concerns have not been mitigated, the legal guardian can:
 - a. Select another family member or friend to provide the HCBS services to the participant. If a family member or friend is not available, the participant’s selected MCO or FMS provider can assist the legal guardian in seeking alternative HCBS service providers in the community; OR Select another family member or friend (who is not a legal guardian or activated DPOA) as a representative to develop or direct the plans of care. In that case, the MCO will obtain the participant’s written consent of delegated representative to act on behalf of participant, initially and annually thereafter; OR
 - b. Select the other legal guardian or activated DPOA to serve as the appointed representative to act on behalf of the participant. An exception to the criteria may be granted by the State when a participant/guardian lives in a rural setting and the nearest agency-directed service provider available to provide services is in excess of 50 miles from the participant residence.

Open for Public Comment: April 15, 2015 to May 14, 2015

Action Required:

Legal guardians and activated durable powers of attorneys for adults receiving home and community based services must designate a representative to direct the services of an individual the guardian or DPOA represents and provides paid supports to, when a Conflict of Interest exists.

The attached documents define the following:

1. Conflict of Interest
2. Directing Care
3. Appointment of a Designated Representative
4. When an Appointed Designated Representative is required.

The attached forms will be required for the appointment of a Designated Representative and the signed form must be maintained in the individual's service record.

The Designated Representative document will also be posted on the KDADS website for access.

Service Coordinators and Personal agents who identify situations in which a conflict exists must provide the attached information to the individual and the legal guardian to address the conflict.

KDADS recognizes that families as paid care providers are an important part of our service delivery system. The above action allows legal guardians to address conflict of interest, when the legal guardian is chosen by the consumer or representative to be a paid care provider.

Reason for Action: To assure that conflict of interest is addressed when a person directing care on behalf of an HCBS Program participant is proposing to or is providing paid supports to the individual.

Designated Representative for Participant-Directed Services

A Designated Representative is defined as a parent, family member, guardian, advocate, or other person who is authorized in writing by the consumer or legal guardian to make determinations on the consumer's assessed care needs, where he or she prefers to live and which home and community based services will be delivered and by whom the services will be delivered. Individuals who chose to participant direct are presumed to have the ability to direct their own care. Not all individuals receiving home and community based services require a designated representative. A designated representative is only required for individuals and/or guardians who are self-directing some or all of their services when a conflict of interest exists. At no other time will an individual be required to appoint a designated representative. However, an individual may decide to appoint a designated representative to perform employer functions related to hiring, firing, monitoring, training and managing direct service workers.

For minor children, legally responsible parent or legal guardian chooses, directs and plans the child's services and will not be required to complete the Designated Representative form. Federal law does not allow a parent or legal guardian of a minor child to be paid to provide services. A parent must comply with requests from the MCO or FMS provider to ensure compliance with federal requirements and establish legal authority.

Conflict of Interest

A conflict of interest exists when the person responsible for developing the integrated service plan to address functional needs is also a legal guardian, durable power of attorney (DPOA) or Designated Representative and that person is also a paid caregiver for the individual. Federal regulations prohibit the individual who directs services from also being a paid caregiver or financially benefitting from the services provided to an individual (42 CFR 441.505).

Therefore, a Designated Representative, activated durable power of attorney, or court appointed guardian shall not also be a paid care provider for the individual, either independently or as an employee or contractor with a provider agency.

In addition, a Designated Representative, activated durable power of attorney, or court appointed guardian shall not also be a Targeted Case Manager for the individual, either independently or as an employee or contractor with a provider agency.

A court appointed guardian or activated durable power of attorney of an adult will, if they are a paid care provider, delegate the authority for directing services to a Designated Representative. The Designated Representative shall not select services for which they financially benefit, such requiring services be provided through an agency or business that the Designated Representative operates.

To direct services means to determine, based on the assessed needs of the individual, where the services will be delivered and by whom the service will be delivered.

Individuals, who do not have a court appointed guardian or designated representative, shall rely on majority agreement of the ISP team for decision making purposes.

When a court appointed guardian proposes to or does provide services to the participant, the following actions must be documented in writing and maintained in the individual's service record:

1. A designated representative must be appointed by participant who is directing his or her care or the court-appointed guardian or activated durable power of attorney, if he or she is also a paid care provider. The appointment of a designated representative does not usurp or otherwise change the rights or responsibilities of a court-appointed guardian or as authorized in the durable power of attorney.
 - a. The designated representative must be appointed in writing
 - b. The appointment shall be at least for the period of the integrated service plan of care, but not to exceed one year.
 - c. The appointment will be documented in the individual's integrated service plan, in the individual's file and in the person-centered plan.
 - d. The appointment shall be made at least annually or when the designated representative changes.
2. The designated representative will:
 - a. Act as the approving agent for services provided, by verifying time and attendance for court appointed guardians or other direct service workers hired to provide services.
 - b. Hire, fire, manage, train, and monitor direct service workers, including the paid court-appointed guardian and other direct service workers.
 - c. Attend all ISP meetings and represent the individual receiving services for determination of service options and identifying qualified providers.
 - d. Attend all Individualized Education Plan (IEP) meetings with the school and individual's support team.
 - e. Participate in the person-centered planning process and make appropriate decisions regarding participant-direction.
3. The designated representative will not:
 - a. Serve in any other capacity as designated representative for the court appointed guardian.
 - b. Displace the guardian in legal and appropriate activities of a court appointed guardian including the appointment of a designated representative.
4. The court appointed guardian, paid to provide services to the individual, may:
 - a. Contribute information for the functional needs assessment.
 - b. Contribute information for the development of the integrated service plan of care and the person-centered support plan.
 - c. Participate fully in the ISP team as a team member.
5. The court appointed guardian, paid to provide services to the individual, may not:
 - a. Override team decisions, or contributions of the designated representative.
 - b. Determine the hours of service for which he or she will be paid
 - c. Determine his or her rate of pay
 - d. Sign the integrated service plan of care to authorize services
 - e. Serve as the employer of record and hire, fire, direct or manage the other direct service workers.



Home and Community Based Programs

Appointed Designated Representative Form (Effective: _____ to _____)

To be completed by the Individual receiving HCBS Program Services:

By signing below, I understand the following:

1. I have chosen the below-named person to act as my Designated Representative for the purpose of directing my Home and Community Based Services as identified in my integrated service plan of care;
2. This appointment lasts for no longer than one year from the date of my signature; or as indicated by the effective dates above; or unless I cancel this consent earlier.
3. I can cancel this consent at any time before its expiration by informing my Care Coordinator or Financial Management Services Provider that I wish to cancel this consent and by completing and signing the **Revocation of Designated Representative form**.
4. I understand that with supporting documentation this consent may be cancelled if it is determined that my designated representative is not acting in my best interest, does not show the ability to self-direct my services according to the integrated service plan of care or the HCBS program requirements, or if it is discovered that the appointed designated representative has a conflict of interest or has committed fraud, waste, and abuse.

Participant Signature _____ Date: _____

Printed Name _____ ☐ Participant Cannot Sign

Guardian/DPOA Signature _____ Date: _____

☐ Guardianship Documents Attached ☐ DPOA Documents Attached

If the individual is unable to sign this appointment, a third party witness must sign. The third party witness may not be the Care Coordinator, Community Service Provider, Targeted Case Manager, Personal Care Attendant or the Designated Representative.

Witness Signature _____ Date: _____

Printed Name _____

Relationship _____



Home and Community Based Programs

Appointed Designated Representative Form (Effective: _____ to _____)

To be completed by the Appointed Designated Representative:

Name _____

Address _____

Phone _____

Email _____

Relationship to Participant _____

By signing below, as the designated representative, I certify:

1. I am an adult 18 years of age or older.
2. I am not prohibited from serving as a designated representative based on a background check, abuse, neglect, and exploitation check or Office of Inspector General Medicaid exclusion list check.
3. I understand and agree to direct home and community based services for the above named individual while engaging and supporting the individual, as much as possible, in choice and self-direction.
4. I understand that as the designated representative, I do not have authority, unless otherwise authorized, to act on the above named person's behalf in situations other than as the employer for directing home and community based services provided through KanCare.
5. I understand that as the designated representative, I have the duty to perform my duty and responsibility as the employer to hire, fire, manage, train, and monitor the direct service worker(s) and ensure compliance with program, state and federal rules and regulations on behalf of the participant without compensation.
6. I acknowledge that as the designated representative, I am prohibited from being paid with Medicaid dollars to provide supports to the individual represented.

Participant Signature _____

Date: _____

Printed Name _____

☐ Participant Cannot Sign

Representative Signature _____

Date: _____

Printed Name _____